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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No. EB-02-NY-216
	)	
Fernando Alejandro	)	NAL/Acct. No. 200332380011
Bronx, NY	)	
	)	FRN: 0007-9608-34

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: January 10, 2003**

By the District Director, New York Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Fernando Alejandro has apparently violated Section 301 of the Communications Act of 1934 ("Act")<sup>1</sup>, as amended, by operating an unlicensed radio transmitter on the frequency 95.1 MHz. We conclude that Fernando Alejandro is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On September 16, 2002, the FCC New York Office received a complaint about an illegal broadcast station in Bronx, NY.

3. On September 20, 2002, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 95.1 MHz in Bronx, NY. The agents observed unauthorized radio broadcast on 95.1 MHz, and identified the source of the unauthorized transmissions as El Fin Se Acerca Church, 2151 Jerome Avenue, Bronx, NY 10453. The agents observed an FM broadcast antenna on the roof of the building. There was no evidence of a Commission authorization for this operation in Bronx, NY.

4. On October 3, 2002, Commission agents conducted a station inspection of the radio station, Radio Mision Evangelistica, located inside the church El Fin Se Acerca Church, 2151 Jerome Avenue, Bronx, NY 10453. An agent spoke to the pastor of the church, Mr. Fernando Alejandro, by telephone, and informed him he was operating an illegal radio station and to cease all operations. The agents left a hand delivered warning letter with the son of Fernando Alejandro.

5. On October 4, 2002, a Commission agent spoke to Mr. Alejandro by telephone, and he acknowledged receiving the hand delivered warning letter. The agent also asked Mr. Alejandro about a

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<sup>1</sup> 47 U.S.C. § 301.

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flyer posted inside the radio station, Radio Mision Evangelistica, located inside El Fin Se Acerca Church. The flyer announced a concert being held at the church on October 12, 2002, presented by Radio Mision Evangelistica, 95.1 FM. Mr. Alejandro said he was not planning on broadcasting the concert on air on 95.1 MHz. The New York Office sent a Warning Letter, by First Class and Certified Mail, Return Receipt Requested, to Mr. Fernando Alejandro for unlicensed operation on the frequency 95.1 MHz. The New York Office did not receive a reply to the Warning Letter.

6. On October 12, 2002, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 95.1 MHz in Bronx, NY. The agents again observed an unauthorized radio broadcast on 95.1 MHz, and identified the source of the unauthorized transmissions as El Fin Se Acerca Church, 2151 Jerome Avenue, Bronx, NY 10453. The agents conducted a station inspection and spoke to Mr. Alejandro about the continued unlicensed operation on the frequency 95.1 MHz. During the inspection, the agents noticed that the unauthorized broadcast on 95.1 MHz had ceased.

### III. DISCUSSION

7. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. A review of Commission's records showed that there was no evidence of a Commission authorization to operate this station on the frequency, 95.1 MHz, in Bronx, NY.

8. Based on the evidence before us, we find that, Fernando Alejandro was responsible for the operation of radio transmission equipment on 95.1 MHz on September 20, 2002, and October 12, 2002, without a Commission authorization in willful<sup>2</sup> and repeated<sup>3</sup> violation of Section 301 of the Act.

9. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")<sup>4</sup>, sets the base forfeiture amount for operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>5</sup> which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

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inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

**IV. ORDERING CLAUSES**

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules<sup>7</sup>, Fernando Alejandro is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Fernando Alejandro SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380011 and FRN: 0007-9608-34.

13. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380011.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking

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<sup>6</sup>47 U.S.C. § 503(b).

<sup>7</sup>47 C.F.R. §§ 0.111, and 0.311.

<sup>8</sup> See 47 C.F.R. § 1.1914.

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purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Fernando Alejandro, El Fin Se Acerca Church, 2151 Jerome Avenue, Bronx, NY 10453.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office

Attachment A-FCC List of Small Entities, October 2002